

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

SANTA MARIA REFINING COMPANY<sup>1</sup>

Employer

and

Case No. 31-RC-7788

PAPER, ALLIED-INDUSTRIAL, CHEMICAL  
& ENERGY WORKERS INTERNATIONAL  
UNION, AFL-CIO, CLC<sup>2</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4</sup>

**INCLUDED:** Full-time and regular part-time maintenance employees, operators, loaders, safety coordinator, lab technicians and weighmaster employed by the Employer at its facility located at 1660 Sinton Road, Santa Maria, California.

**EXCLUDED:** Office clerical employees including yield analyst, order clerk and accounts receivable clerk, all other employees, guards and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION<sup>5</sup>**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the

United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO, CLC.**

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *National Labor Relations Board v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of the election eligibility list, containing the **FULL** names and addresses of all the eligible voters shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the office of Region 31, 7th Floor, 11150 W. Olympic Boulevard, Los Angeles, California 90064-1824, on or before **October 27, 1999**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such a list except in extraordinary circumstances.

Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **November 3, 1999**.

**DATED** at Los Angeles, California this 20<sup>th</sup> day of October, 1999.

/s/ James J. McDermott

James J. McDermott, Regional Director  
National Labor Relations Board  
Region 31  
11150 West Olympic Blvd., Suite 12100  
Los Angeles, CA 90064-1824

## **FOOTNOTES**

1. The name of the Employer appears as corrected at the hearing.
2. The name of the Petitioner appears as corrected at the hearing.
3. The Employer, Santa Maria Refining Company, a California corporation, with a place of business located in Santa Maria California, is engaged in the operation of an asphalt refinery. During the past 12 months, a representative period, the Employer purchased and received goods, supplies and materials valued in excess of \$50,000 from sources located within the State of California, who in turn purchased those same goods, supplies and materials directly from sources located outside the State of California. The Employer thus satisfies the statutory, as well as the Board's discretionary, standard for asserting jurisdiction. *Siemons Mailing Service*, 122 NLRB 81 (1959).

4. A. **PROPOSED EMPLOYER UNIT**

The parties agreed at the hearing that the appropriate unit should at minimum include all full-time and regular part-time maintenance employees, operators, loaders, safety coordinator, lab technicians and weighmaster employed by the Employer at its facility located at 1660 Sinton Road, Santa Maria, California and exclude all guards and supervisors. The Employer seeks to include the yield analyst, order clerk, accounts receivable clerk and office manager in the petitioned-for unit as it argues that there is sufficient integration and community of interest between those classifications and the other petitioned-for classifications.

B. **PROPOSED PETITIONER UNIT**

The Petitioner contends the yield analyst, order clerk, accounts receivable clerk and office manager are office clerical positions and lack a sufficient community of interest and integration with the included classifications and thus should not be included in the petitioned-for unit. The Petitioner also contends the office manager and technical service manager, also referred to as the senior lab technician, are supervisors and thus should be

excluded from the unit. The Employer contends neither position is supervisory, they are at most leadmen positions, and should be included in the unit.

### C. BACKGROUND

Santa Maria Refining Co., herein the Employer, is a small refinery located in Santa Maria, California. The Employer takes crude oil, which is delivered to it by truck, and distills it by means of a heating process which yields its primary product, asphalt, and its secondary products, gas oils and naphtha. The Employer sells mainly to large construction companies who do road construction and repair work. The refinery was operated by other employers for many years and was shut down for several years, before being reopened in May, 1995.

The General Manager oversees the entire refinery operations. There is no sales or marketing staff at the Employer. Sales and marketing are handled by the General Manager. At the time of the hearing he had held his position for five months. There are also no truck drivers or warehousemen at the Employer. The refinery's business is generally conducted on an FOB basis with customers picking up the Employer's product at the refinery. The crude oil refined by the Employer is also delivered to the refinery by suppliers in tank trucks.

The Employer has operators in the refinery 24 hours a day, 7 days a week. The crews of A and B operators work rotating 12 hour shifts, with a few days on and then several days off. A crew consists of an operator A and B and there are four crews. Both A and B operators spend the majority of their work day in the control room which is an enclosed office area located approximately 100 feet from the building where the yield analyst, order clerk, accounts receivable clerk, office manager, General Manager and Operations Manager work, and 300-400 yards from the maintenance employees' base of operations, which is in the shop. The B operators, described by the Employer's General Manager as the "legs" of the A operators spend more time in and around the refinery than the A operators. Both classifications spend a substantial percentage of their time in the control room working at a desk watching a control panel with gauges showing temperatures, pressures and volume, and monitoring inventory levels in various tanks and schedules of products being shipped

to make certain the right products are being shipped and completing paperwork relating to those items. The A operator is the lead operator and has significant responsibility for the operation of the refinery. The A operator is to make sure the Employer makes the right product to meet customer demand and the shipping schedule. The A operators typically leave the control room only when an alarm goes off signaling a problem, and the B operator is either not available or requires assistance. The B operators have responsibility for the boiler and thus are out of the control room more often than the A operators. They also do the same monitoring, recording and paperwork as the A operators. The operators maintain logs and enter readings from the various gauges. The logs, receipts and shipping documents are picked up by the yield analyst in the morning.

The loaders work with the A and B operators and guide trucks to the proper loading station, making certain the tank valves are set properly and that customers get the right product on their truck. When the weighmaster is not there, the loader weighs trucks and issues bills of lading. They log trucks in and out of the facility. The loaders work only on the swing and graveyard shifts. The loader may also do light maintenance work. On the day shift, certain of their functions are performed by the weighmaster. The weighmaster is responsible for documenting everything that crosses the scale during their shift. They are in the scale house, separate from the administration offices and refinery. The weighmaster enters all weighing activity into her computer for sales and accounts receivable purposes.

The safety coordinator maintains instrumentation used in the refinery, does light maintenance and spends 10-15 percent of his time doing safety training.

The maintenance employees maintain the equipment in the refinery. The maintenance employees report to the Operations Manager through the maintenance foreman. The maintenance foreman is included in the petitioned-for unit. The maintenance shop is 300-400 yards from the refinery.

The two lab employees, the technical service manager and a less senior lab technician, perform tests on samples of the Employer's products to make certain they have the proper qualities and meet the required specifications. They also perform research on products.

The lab technician reports to the technical service manager who reports to the General Manager.

The yield analyst goes to the control room at the beginning of the day and picks up paperwork which is relied upon by the operators, loaders and weighmaster during the course of the day and contains information put on it by those employees. The yield analyst picks up receipts on deliveries from the weighmaster, and goes through that paperwork to make certain that everything is balanced every single day. If there is a discrepancy, the yield analyst may call or go to the operator directly who may then need to regauge. The yield analyst balances crude oil receipts against billed amounts.

The order clerk spends approximately 50 percent of her time generating paperwork, specifically shipping documents (bills of lading), and spends the remainder of her time answering the phone, taking orders from customers and coordinating scheduling with common carriers who ship the Employer's product. At the end of the day the order clerk takes incoming shipping orders and leaves them at the scale house for the loaders. The next morning the weighmaster receives the completed documents and enters into the computer the volume of product and that information is then processed by the accounts receivable clerk who bills the customer.

The accounts receivable clerk creates a computer file for every customer after an order is created. She creates the customer invoices. She also is responsible for picking up time cards in the plant and reviewing them for the Employer's outside payroll service.

The office manager functions, inter alia, as the credit manager, determining which clients will be extended credit and which will be cash on delivery, and she is trained to perform all the jobs that report to her. She also does follow up on accounts receivable.

The A and B operators, loaders, and safety coordinators report to the Operations Manager. The weighmaster reports to the office manager. The yield analyst, order clerk, and accounts receivable clerk also report to the office manager.



The A and B operators work overtime infrequently and only in unusual circumstances. All employees (other than the operators) work eight hour days, Monday through Friday. Only the maintenance employees work overtime frequently. The yield analyst, accounts receivable clerk and office manager are salaried, but are also paid a premium rate for overtime hours worked. The order clerk is paid hourly. Paydays are the same for all Employer employees. All employees are entitled to the same breaks. All employees were invited to the company picnic. All employees are eligible for the same holidays. All employees are eligible for the same medical insurance, 401(k) plan and sick leave. All employees will be covered by the same employee manual, which is being prepared.

The A and B operators are paid between \$16.00-\$19.00 per hour, the loaders between \$15.00-\$17.00, the maintenance mechanics between \$19.00-\$22.00, the yield analyst between \$14.00-\$15.00, the accounts receivable clerk between \$12.00-\$14.00, the office manager between \$16.00-\$17.00, the weighmaster between \$9.00-\$11.00, the lab technician approximately \$19.00 per hour, the technical service manager between \$24.00-\$25.00 and the order clerk between \$8.50-\$9.00. The yield analyst, order clerk, accounts receivable clerk and office manager do not punch a timeclock, they have a written log in the office.

The record indicates that the technical service manager and the office manager are more skilled and experienced employees than the others in their departments. The technical service manager is a Ph.D. chemist and has specialized technical skills relating to asphalt and the chemistry connected with it. The Employer has to meet certain state and federal specifications and its products must be tested and certified. Products must be sent to various agencies for results to be verified. The technical service manager's job is, inter alia, to make sure product shipped by the Employer is up to required specifications or grades. The technical service manager has a less senior lab technician who works with him. Their hours are generally the same, 7:00 a.m. to 3:00 p.m. for the lab technician, and 8:00 a.m. to 5:00 p.m. for the technical service manager. The technical service manager did not hire the lab technician. The lab technician was a former loader or operator. The record shows that the Employer would consider the technical service manager's recommendation to give a pay increase or to hire an employee, but would also do its own

independent evaluation. The record also shows that the technical service manager gives general direction to lab technician based on his greater knowledge and skills.

The office manager has been trained to perform the duties of the positions reporting to her. At the time of the hearing, she had only been in her position for 2 months. Her recommendations on overtime, vacation and how employees are doing, when she makes them, are considered by the General Manager but he reviews and investigates them and either agrees or disagrees independently. On one occasion the office manager had advised the employees that she was in charge when the General Manager was gone and he had to inform her that she had overstepped her bounds and not to do so again. Neither the technical service manager nor the office manager hire, fire, promote, transfer, suspend, reward, adjust grievances, or perform like responsibilities. If someone were hired in either of their departments (which had not happened as of the date of the hearing), the record indicates that they would interview those applicants, but the General Manager would make the final decision with regard to the hire. At the time of the hearing, the Employer had no policy requiring written evaluations so neither the office manager nor the technical service manager had done any written evaluations. The record indicates that if either were called upon to do an evaluation, however, the General Manager would review the evaluation and make his own independent assessment.

#### D. CLERICAL EMPLOYEES

The Employer contends that the yield analyst, order clerk, accounts receivable clerk and office manager are plant clerical positions and should be included in the petitioned-for unit as there is sufficient integration and other community of interest factors to warrant their inclusion. The Petitioner contends the positions are office clerical positions and should be excluded. In addition, the Petitioner contends the office manager is a supervisor and thus should not be included in the unit.

The Board has long held that the distinction between office and plant clericals is rooted in community of interest concepts. *Minneapolis-Moline Co.*, 85 NLRB 597, 598 (1949). Clericals whose principal functions and duties relate to the general office operations and

which are performed within the office itself are office clericals who do not have a close community of interest with a production unit. This is true even if those clericals spend as much as 25 percent of their time in the production area and have daily contact with production personnel. *Container Research Corp.*, 188 NLRB 586, 587 (1971).

In *Hamilton Halter Co.*, 270 NLRB 331 (1984) the Board recognized that, “the distinction drawn between office clericals and plant clericals is not always clear.” It went on to hold that the clericals at issue there were plant clericals whose function was closely associated with production. The factual setting in *Hamilton Halter Co.* is clearly distinguishable from that here. The clericals in *Hamilton Halter* performed a significant degree of production work. The Board noted that they filled sample orders for customers, assisted in loading and unloading trucks, stamped sizes on tags, and occasionally contributed to the design and development of new products. In addition, because of their overlapping duties, the clericals in *Hamilton Halter* were supervised at least part of the time by the shop supervisor. As noted, the distinction drawn between office clericals and plant clericals is not always clear. The disputed employees in the present case appear to share some characteristics of both categories of employees in the variety of duties they perform and in the working conditions they enjoy. On the basis of the record as a whole, however, I find that the yield analyst, order clerk and accounts receivable clerk tasks and job duties are more closely akin to those performed by office clericals than those performed by plant clericals.

The three disputed positions report to the office manager, rather than the Operations or General Manager. The employees are physically separated from the refinery in an office 100 feet away. The yield analyst and order clerk have only the most minimal work contact with the loaders, operators or weighmaster. The accounts receivable clerk has virtually no work contact with anyone in the refinery process. The disputed employees perform paperwork duties, taking orders, preparing bills of lading, and filling out required paperwork. They perform no production work, contrary to the employees in *Hamilton Halter*. I cannot conclude that there is sufficient integration or other community of interest factors to warrant their inclusion in the petitioned-for unit. In these circumstances, I find that the yield analyst, order clerk and accounts receivable clerk are office clericals and

therefore are excluded from the unit. See *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994); *Virginia Mfg. Co.*, 311 NLRB 992 (1993).

In view of my finding that the yield analyst, order clerk and accounts receivable clerk are office clericals and thus should be excluded from the petitioned-for unit, it is unnecessary to determine whether the office manager is an office clerical or a supervisor, as in either event she is excluded from the petitioned-for unit.

#### E. TECHNICAL SERVICE MANAGER

The Petitioner contended at the hearing (but did not raise the issue in its post-hearing brief) that the technical service manager is a supervisor and thus should be excluded from the unit. The Employer contends the technical service manager is at most a leadman and thus should be eligible to be included in the petitioned-for unit.

The burden of proving supervisory status rests on the party alleging that such status exists. *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). The Board will refrain from construing supervisory status too broadly because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environmental Co.*, 308 NLRB 101 (1992). After a review of the facts in the present case, it cannot be concluded that the Petitioner has proven that the technical service manager is a supervisor.

Section 2(11) of the Act defines a supervisor as:

"Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The record fails to establish that the technical service manager is a supervisor. Thus he does not hire, fire, transfer, layoff, recall, discharge, reward, suspend, promote, discipline or effectively recommend any such action. The record indicates that if the Employer needed to hire someone to work with the technical service manager, it would probably seek

the technical service manager's input on a hiring recommendation due to his advanced knowledge and skill, but would do its own evaluation of the applicant. The same is true of any possible recommended pay increase. The record also indicates that the technical service manager gives instruction to the less senior lab technician. This, however, appears to be a situation where a more senior, experienced, leadman-type individual instructs a subordinate based on his greater knowledge and skill rather than the responsible assignment and direction of work contemplated by Section 2(11) of the Act.

The record, in fact, reveals that the technical service manager's responsibilities are very similar to those of the maintenance foreman, which is a position included in the unit.

Thus, based on the record, briefs and exhibits in this matter, I cannot conclude the technical service manager has been shown to be a supervisor under Section 2(11) of the Act.

There is, however, another issue with regard to the status of the technical service manager, which was not raised by either party to the proceeding, and that is that it appears that the technical service manager is a "professional" as that term is used under Section 9(b)(1) and 2(12) of the Act. Section 9(b)(1) provides that professional employees may not be included in a bargaining unit with non-professionals unless they vote in favor of such inclusion. The term "professional employee" is defined in Section 2(12), as follows:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

In the present case the technical service manager is a PhD chemist. He is the only chemist at the facility. The record indicates that the technical service manager tests the Employer's products to verify that they meet required specifications and grades and he signs off on certifications submitted to various state and other agencies verifying his results. He also spends a portion of his time doing research and experimentation, to produce a "better mousetrap" as stated by the General Manager. The technical service manager works in the laboratory area of the facility and uses equipment such as a viscometer, penetrometer, dynamic shear rheometer and a pressure aging vessel. Thus, the record indicates that the technical service manager engages primarily in work that is intellectual and varied involving knowledge of advanced science. His job requires that he use discretion and judgment in its performance and he is the only person competent at the Employer to perform his job. Thus under Section 2(12) of the Act, the technical service manager is a "professional."

The status of the less senior lab technician as a professional is unclear from the record. The record indicates he was formerly either a loader or operator. The General Manager indicated he was not a chemist or PhD but he did not know what his educational background was. The General Manager's lack of knowledge of the lab technician's background may well indicate that an advanced level of schooling or knowledge is not required to be the junior lab technician. Thus, based upon the information in the record, it cannot be concluded that the less senior laboratory technician is also a professional. This leaves the technical service manager as the only professional. As noted, professional employees may only be included in a bargaining unit with non-professionals if they assent to such inclusion. The Board, however, will not certify a one person unit. Thus, the technical service manager will be allowed to indicate whether he wishes to be included in the non-professional unit being sought by the Petitioner. If he wishes to be included in the non-professional unit, he will then be given the opportunity to vote in the election in this matter. If he does not wish to be included in the non-professional unit, he will be unrepresented.

## F. CONCLUSION

Based on the above, it is concluded that the yield analyst, order clerk, and accounts receivable clerk are office clericals and thus excluded from the petitioned-for unit. The office manager is excluded as either an office clerical or supervisor. The technical service manager, a professional, will be given the opportunity to indicate whether he wishes to be in the petitioned-for non-professional unit, and, if so, whether he wants to be represented by the Petitioner. If he indicates he does not wish to be included in the unit, as the record indicates that he is the only professional, and as the Board will not certify a one person unit, he will be unrepresented.

There are approximately 17 employees in the unit found appropriate.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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